IN THE HIGH COURT OF JUDICATRE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3206 of 2002

Vijay Bahadur Singh, Hindu, Aged 34 years, Indian Inhabitant, Mumbai, residing at C-1, Jaibharat Co-operative Housing Society Ltd., Sunder Baug, Kamani, Kurla (West), Mumbai-400 070.)..PETITIONER

Versus

1.Brihan Mumbai Mahanagarpalika a local statutory body established under the provisions of the Mumbai Municipal Corporation Act, 1888 having its offices at Mahapalika Marg, Fort, Mumbai-400 001.
2.The Municipal Commissioner, Brihan Mumbai Mahanagarpalika having his offices at Mahapalika Marg, Fort, Mumbai-400 001.
3.The Additional Municipal Commissioner (West Suburbs) of Brihan Mumbai Mahanagarpalika having his offices at Mahapalika Marg, Fort, Mumbai-400 001.
4.The Chief Officer (Enquiry) of Brihan Mumbai Mahanagarpalika having his offices at Mahapalika Marg, Fort, Mumbai-400 001.
5.The Education Officer of Brihan Mumbai Mahanagarpalika having his offices at Mahapalika Marg, Fort, Mumbai-400 001.
6.Superintendent (Primary Education Department) of Brihan Mumbai Mahanagarpalika having his offices at Mahapalika Marg, Fort, Mumbai-400 001.)..RESPONDENTS

Mr. G.V. Murti, for the Petitioner
Mrs. A.R. Joshi, for the Respondents.

CORAM: F.I. REBELLO, J.
DATE : 18th August, 2005

ORAL JUDGMENT:

. The petitioner herein was charged for misconduct and pursuant to that domestic enquiry was conducted. The Enquiry Officer considering the material found that two of the charges

were proved whereas the other charges were disproved. The procedural requirements were followed and thereafter by order dated 13thAugust, 2001 the following punishment was imposed:-

> "As per the abovesaid order, the charge which is proved against him, his next annual increment is hereby withheld for three years permanently. He is reinstated on duty and his suspension period from 17.8.2000 till the date of report on duty is hereby treated as unpardonable."

An Appeal came to be preferred by the petitioner herein, which came to be dismissed by order dated 22nd April, 2002 and the same was communicated to the petitioner by letter dated 30th May, 2002. The petitioner thereafter filed the present petition.

2. At the time of hearing of this petition on behalf of the petitioner learned Counsel submits that the finding recorded by the enquiry officer is based on no evidence and/or is based on conjectures and surmises and consequently the finding that the petitioner assaulted the student is illegal and contrary to the record. It is further submitted that this Court in respect of another co-delinquent who was petitioner No.2 in Writ Petition No.407 of 2003 by judgment dated September, 9, 2004 has set aside the punishment imposed on the petitioners therein. It is, therefore, submitted that on both the counts the petition ought to be allowed.

3. On the other hand on behalf of the respondents their

learned Counsel submits that the enquiry officer has recorded a finding of fact that there was an assault on the student. No teacher is allowed to assault a student and even if the same is not notified as a misconduct in terms of the Rules that are in force by the very act of the teacher assaulting the student would amount to a misconduct being contrary to the duties and functions of a teacher.

4. At the outset it may be pointed out that this Court in Writ Petition NO.407 of 2003 in respect of similar charges except charge No.1 which is different, placing reliance in the case of M/s.Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut and Ors., AIR 1984 SC 505 held that in the absence of the misconduct being specified the petitioner therein could not be held guilty of the purported charges and consequently set aside the order imposing punishment on the ground that the misconduct was not defined.

5. It may be, however, pointed out that if a teacher assaults a student there is no need for the misconduct to be defined as that very act of a teacher assaulting a student would itself amount to a misconduct. If authority is requried for that proposition we may refer to the judgment of this Court in Bharat Petroleum Corporation Ltd. vs. Petroleum Employees Union and Anr., 2005 (1) Mh. L.J. 671. In that judgment reliance was placed in the case of Secretary to Government & Ors. vs. A.C.J. Brito, 1997 II LLJ 388 and D.C.Chaturvedi vs. Union of India, 1995 (6) SCC 749 as also Ranjit Thakkar vs. Union of India & Ors., 1988 I LLJ.256. Therefore, if it can be held that the misconduct is proved

then this would not be a fit case for this Court to exercise its extra ordinary jurisdiction and quash that order.

6. The question, therefore, is whether the finding recorded by the enquiry officer is based on any material. It may be pointed out that the evidence recorded in this case was the same evidence which was considered in the case of Sabhajit S. Singh. There were 3 circumstances which this Court noted. (1) The students witnesses in their first statement denied the incident, in the statement recorded at home they accepted that there was a case of assault, but in the evidence before the enquiry officer they flatly denied that the incident had taken place. Based on this and in the absence of any other material this Court recorded a finding that based on that material the misconduct could not be proved. The very same set of facts also exist in the present case. Once this Court in the case of Sabhajit S. Singh has refused to accept the evidence of the students which evidence was accepted by the enquiry officer in coming to the conclusion of assault the misconduct proved being based on the same material the finding will have to be held to be perverse. Once that be the case, the punishment imposed will have to be set aside.

7. In the light of that Rule made absolute in terms of prayer clause (a). In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)